IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.5054 of 2005
Date of decision: 12.7.2007

Jagdev Singh & Others.

-----Petitioners

Vs.

Punjab State Electricity Board & Others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Ramesh Sharma, Advocate
for the petitioners.

Mr. Rakesh Garg, Advocate
for respondents.

Adarsh Kumar Goel, J.

This petitioners seeks a direction for appointment of the petitioners to the posts of Technician Grade-I and Grade-II.

Case of the petitioners is that they were serving in Guru Nanak Dev Thermal Plant at Bathinda, which is a part of Punjab State Electricity Board. They have worked for 20-30 years. In October 2002, Punjab State Electricity Board circulated a notice for recruitment to several posts including nine posts of Technician Grade-I and nine posts of Technician Grade-II. The petitioners applied for the same. A written

examination was held on 12.10.2003, which the petitioners qualified. They appeared for the interview and a merit list was prepared. They were kept in the waiting list, except petitioner No.10. Selected candidates were given offer of appointment on 23.10.2003. Subsequently, some more posts became vacant and the petitioners represented that they be appointed against the same. The petitioners were not offered any appointment, though persons in waiting list in the category of Assistant Junior Specialists were offered appointment. In March 2005, a fresh circular was issued for five posts of Technician Grade-I and 23 posts of Technician Grade-II, which showed that there were vacancies, but the petitioners were not appointed. In the reply filed, the stand taken is that advertisement dated 31.3.2005 is for direct recruitment from open market, to which, the petitioners are also free to apply, if they were eligible. They could not claim any right for appointment against the vacancies advertised in the year 2005, only on the basis of their having passed written examination held on 12.10.2003, as in the said examination, all notified vacancies were duly filled up.

We have heard learned counsel for the petitioners.

It remains undisputed that the petitioners were not selected for the posts which were advertised. The said selection is not under challenge. No right can, thus, be claimed merely by being in the waiting list, which was to be relevant only for filling up such vacancies as may arise on account of non-joining of the selected persons.

The law of the point is well-settled. Reference may be made to law laid down by the Hon'ble Supreme Court in

State of U.P. v. Rajkumar Sharma,(2006) 3 SCC 330, wherein it was observed:-

> "13. Filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution. (See *Union of India* v. *Ishwar Singh Khatri* 1992 Supp (3) SCC 84; *Gujarat State Dy. Executive Engineers' Assn* . v. *State of Gujarat* 1994 Supp(2) SCC 591; *State of Bihar* v. *Secretariat Asstt. Successful Examinees Union, 1986* AIR 1994 SC 736; *Prem Singh* v. *Haryana SEB* (1996) 4 SCC 319; *Surinder Singh* v. *State of Punjab* AIR 1998 SC 18 and *Kamlesh Kumar Sharma* v. *Yogesh Kumar Gupta* AIR 1998 SC 1021.)
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> **14.** Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See *Shankarsan Dash* v. *Union of India* AIR 1991 SC 1612; *Asha Kaul* v. *State of J&K* (1993) 2 SCC 573; *Union of India* v. *S.S. Uppal* AIR 1996 SC 2340; *Hanuman Prasad* v. *Union of India* (1996)10 SCC 742; *Bihar Public Service Commission* v. *State of Bihar* (1997) 3 SCC 198: AIR 1997 SC 2280; *Syndicate Bank* v. *Shankar Paul* AIR 1997 SC 3091, *Vice-Chancellor, University of Allahabad* v. *Dr. Anand Prakash Mishra* (1997) 10 SCC 264; *Punjab SEB* v. *Seema* 1999 SCC (L&S) 629; *All India SC & ST*

Employees' Assn. v. *A. Arthur Jeen* AIR 2001 SC 1851; *Vinodan T.* v. *University of Calicut* (2002) 4 SCC 726; *S. Renuka* v. *State of A.P.* AIR 2002 SC 1523 and *Batiarani Gramiya Bank* v. *Pallab Kumar* AIR 2003 SC 4248.)

15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha* v. *State of U.P.* AIR 1996 SC 540; *Secy., Jaipur Development Authority* v. *Daulat Mal Jain* (1997) 1 SCC 35; *State of Haryana* v. *Ram Kumar Mann* (1997) 3 SCC 321; *Faridabad C.T. Scan Centre* v. *D.G., Health Services* (1997) 7 SCC 752; *Jalandhar Improvement Trust* v. *Sampuran Singh* AIR 1999 SC 1347; *State of Punjab* v. *Dr. Rajeev Sarwal* (1999) 9 SCC 240; *Yogesh Kumar* v. *Govt. of NCT, Delhi* (2003) 3 SCC 548; *Union of India* v. *International Trading Co.* (2003) 5 SCC 437 and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit* v. *President, Indore Development Authority* (2006) 2 SCC 604.)

For the above reasons, there is no merit in the petition and the same is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 12, 2007
ashwani

(AJAI LAMBA)
JUDGE